

DATE August 5, 2023

FROM Shelby Sheehan

RE Sunshine Violation Hearing on 8/7/2023

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This submission lists the records necessary to ensure a transparent process and public access and participation. This list should not be considered "Burdenome" as it is the public right to ensure adherence to public policy.

Unfortunately, even as of the date of this submission, the majority of the needed documents are not accessible and were not accessible in a meaningful way for the public.

Therefore, many decisions were not transparent, not accurately reported, and not sufficiently evaluated by policy bodies and the public.

IN MY OPINION:

- Inaccessibility of complete and accurate Project information caused insufficient oversight due to over-reliance on incomplete and/or inaccurate secondary reports/presentations.
- Potentially allowing substantial non-conforming changes and excessive impacts to be added to the Project.
- If the Ordinance rules had been followed, the public (and policy bodies) would be able to verify if there are nonconforming elements in the Projects.
- Additional materials and comparisons need to be made available to verify Project compliance

REQUIRED ACCESS PER THE SUNSHINE ORDINANCE.

To paraphrase the Sunshine Ordinance:

- The public and all policy bodies should have had timely and "easy" access to a well-documented, transparent, complete, and accurate record with ALL the materials related to the SWM Project-- past and current.
- Agenda materials should contain all information necessary to accommodate public participation and support policy makers in well-reasoned and legally-defensible decisions.
- Most importantly, a References section should accompany the Staff Summary for all documents cited, including those cited by Presenters, and should include links to ALL actions taken by Policy Bodies over the lifetime of the project. Anything less than that is not transparent, and violates the Sunshine Ordinance.*
**(if a highschooler can do it, the City can.)*
- Staff Reports should provide legally-defensible complete and accurate information with sufficient detail to convey the important elements of the Project and

- Reports and Presentations should undergo a rigorous “Due diligence” certification process for: (1) veracity, (2) accuracy, (3) completeness, --and just as important—(4) objectivity by the **City Attorney per their statutory duties.**

—(i.e., if a Staff Report Summary insufficiently describes the various legally-binding elements of the Plan and/or if the Presentation also fails to call out specific binding agreement different from previously reported, or even if it is attached but buried in a long document, the materials still would not be considered compliant with the Sunshine Ordinance as “easy and accessible”).

SOUTH OF WEST MIDWAY--“ACCESSIBLE” RECORDS NEEDED

In order for the public and policy bodies to make informed decisions, they need easy access to all records regarding projects currently under review, and staff reports should provide essential data for review and comparison between previously approved plans and newly proposed plans.

The RESHAP and West Midway Projects (South of West Midway Project or SWMP), have been in development for almost 10 years as part of the overall Alameda Point Project approved in the 2014 Alameda Point EIR and codified by the 2017 MSSP. Significant changes to the 2020 Plans occurred starting in late 2021, leading to the current 2023 Project approved by City Council on July 18, 2023.

For the South of West Midway Project, at a minimum, “ALL” documents would include easy public access to accurate and complete records between 2014-2023 of all:

- decisions (with supporting rationale)
- design plans,
- regulatory documents,
- completed contracts and other records (not drafts), and
- meeting minutes, etc.

LIST OF NEEDED DOCUMENTS

As I found in my more than a month-long time-intensive and still-not-finished quest for transparent and accessible public information, ALL documents include, but are not necessarily limited to:

1. Alameda Point EIR 2014
2. Main Street Neighborhood Specific Plan 2017
3. General Plan and EIR 2020 and 2040
4. Plan Bay Area
5. Housing Element 2022
6. 2018 RESHAP ENA and DDA
7. 2023 West Midway Plan
8. Site A Plan (before and after)
9. RFQs 2018-2023, proposals, designs, etc for both Projects
10. Current municipal and State of Federal laws that apply to the project (e.g. inclusive housing)
11. Surplus Lands Act
12. Navy EDC and others

13. Signed City Resolutions
14. Completed Contracts
15. Density Bonus Application and Determination
16. Developer Reports (Infrastructure Plan?)
17. Spending (Infrastructure Plan? Measure A funds? RESHAP Design costs?)
18. CEQA checklists (with ALL the impacts including Impact 4.D.5)
19. Informative and complete meeting minutes and records from policy bodies regarding any design/development and changes, concerns, or review by all policy bodies 2017-2023 (eg. Rationale for RESHAP relocation)
20. Minutes per 2-91.1 of "gatherings involving members of a "policy body" (e.g., Planning Department or other City staff) regarding any item that (is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; ... and to negotiate consensus thereupon. (eg. Rationale for RESHAP relocation)
21. Staff Reports etc with complete and accurate verifiable information including:
 - complete and accurate review/analyses regarding plan design and/or changes
 - explanation and/or rational of project changes/variances etc and supporting documentation
 - comparison of prior plans and prior meetings (names, dates, and minutes)
 - specific excerpts from supporting document references (regulation, code, land use plan etc; relevant sections, page numbers, and where to find them. Eg. Links not just :Citys website)
22. Links to records in the Staff report would be adequate.

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August 5, 2023

Submission for Sunshine Hearing August 7, 2023 from Complainant

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PROCEDURAL OBJECTIONS

1. RE “The Chief Assistant City Attorney will provide a Confidential Neutral Statement to the Commission under separate cover.”
2. RE “Complaint Hearing Procedures”
3. RE Statutory Duties of City Attorneys as Public Officials per Rules of Professional Conduct and acting in the public interest

Objection #1. Impartiality.

- The City Attorneys’ role in the hearing causes undue influence on the Commissioners and will not allow me to have an impartial hearing.
- Provision of information to the preferential party violates the law, the code of ethics, and public policy
- Allowing a City Attorney to participate in the hearing in any other than an advisory position for BOTH parties clearly biases the Commissioners against me and does not allow an impartial process.

Objection #2. Transparency. (AMC 2-90.2)

- Provision of a “Confidential” statement to one party to the exclusion of the opposing party violates my right to a transparent process.

Objection #3. Due Process

- Provision of a “Confidential” Attorney Statement violates my right to due process
- The limited time for arguments at the hearing violates my right to due process

Objection #4. Requirements for City Attorney Performance of Statutory Duties to the Public

The OGC should take notice of the dual Statutory Duties of the public attorney- not only to the Client (City)- but to their higher duty to protect the Public Interest and to provide impartial application of City Laws and for officials “not to benefit”.

➤ Dual duties include:

- determining what the law requires in any given situation
- advising the public consistent with the truth
- advising the client on Compliance with the Law
- not pursuing or to justifying a course of action that is unlawful or against the public interest
- actions are subject to discipline per BPC Sec. 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent.

- Specifically, the City Attorney:
 - Ensures Accurate, Complete, and Objective Public Information
 - reviews documents prepared by City departments both prior to its circulation and when it appears in the public domain (“endorsement” or “certification”)
 - requires that a true and impartial title and summary of an initiative or measure is prepared to avoid misleading the public.¹¹
 - Acts as a Check on Illegal City Conduct
 - advises the city to follow laws designed specifically to protect the public interest
 - advises the City on the legality of the city’s conduct for the benefit of the public.⁸ (e.g., when reviewing the legality of claims or contracts, advises regarding the fair and non-discriminatory application of city laws.⁹)
 - Protects Public Rights during public meetings by
 - By ensuring the public the right to comment¹⁰,
 - Prohibiting discussions of items not on the agenda,
 - Public due process during a public hearing.
 - Per the job description
 - (job posting) Responds to citizen complaints and requests for information.
 - prepares opinions considering the actions, powers, duties, functions and obligations of the City Council, City officials...
 - (Charter) ...whenever requested ... shall give legal advice in writing.

⁸ State Bar Rules Prof. Conduct, Rule 1.16.

⁹Cal. Gov. Code § 34090 provides, in part: Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book, or paper, under the department head’s charge, without making a copy thereof, after the same is no longer required.” Also, California Government Code section 34090.6 provides for the destruction of recordings of routine video monitoring and recordings of telephone and radio communications maintained by a city department with the approval of the legislative body and the written consent of the agency attorney.

¹⁰ Cal. Gov. Code § 54954.3, subd. (a).

¹¹ Cal. Elec. Code § 9280 provides, in part: Whenever any city measure qualifies for a place on the ballot, the governing body may direct the city elections official to transmit a copy of the measure to the city attorney, unless the organization or salaries of the office of the city attorney are affected. The city attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure.

CITY ATTORNEY VERIFICATION NEEDED

My complaint alleges not only violations of transparency and access to records, but also lack of proper judicial oversight. These violations of the Sunshine Ordinance erroneously allowed approval of a noncompliant Project.

1. Per the Alameda Municipal Code, The City Council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the General Plan and other regulations prescribed for the use of land.

2. Per the duties described above, it is the City Attorneys' duty to certify the accuracy, completeness and impartiality of ALL Staff Summary Reports presented to the Council and other policy bodies before it enters the public domain.
3. Per AMC 2-93.7, the Sunshine Ordinance Supersedes Other Local Laws, and whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

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CURE

Compliance with the Sunshine Ordinance requires accurate, complete, and objective project information from the City, including City's public statements so as to not mislead the Public.

A quick look around the Net shows abject failure by the City to facilitate public participation and could be said by some intentionally impedes the public. It is an undeniable fact that the complete record was – and still is—inaccessible, inaccurate, and misleading. To comply with the words, spirit and intent of the Sunshine Ordinance, large contentious, amended Projects should always be front and center on the “City Website” with links to Project documentation as it evolved, and optimally a “Call-out” to the changes currently under review.

Look at the Main Page, the Planning Dept Page, and the Base Reuse Page, and see if you can tell me:

- if the South of West Midway Project is active
- what and where the applicable Land Use regulations are
- when the next meeting is
- if there have been any recent changes
- and what the current plan under review is.

Spoiler Alert: you cant.

That alone shows the Sunshine Ordinance has been violated. Additionally, the City only provided the 2023 materials, and that is far from the “Complete record” necessary to evaluate the changes between

Further, I understand the OGC is not re-adjudicating the Project approval per se, but the Sunshine Ordinance does in fact require that decisions are based on accurate and complete records, including City Staff Public Statements.

Per the City Attorney's explicit statutory duties set forth in State and local laws, the City Attorney shall ensure that City Statements are accurate, complete and objective. The process of curing the complaint ultimately includes verification that the City Attorney conducted an impartial legal review of Federal, State and local environmental regulations and contract law as they relate to the veracity of City officials public statements and reports regarding Project regulatory and procedural compliance.

Therefore, it is imperative that the City Attorney provide a publicly-available legal brief and be prepared to answer questions about the accuracy, completeness and objectivity of the City's public statements for the South of West Midway Project, with regard to process as well as compliance with environmental regulations and land use plans.

The City Attorney should attend the hearing and be held to at least the same standard as an uneducated member of the public (me) seeking information with regard the burden necessary to demonstrate a compliant and transparent process. To that end, I should be allowed to question the City Attorney and ask specific questions about my own findings of inaccuracies, biases and improper process for the Projects.

Therefore, in time for the hearing, the City Attorney should provide (1) the record of its review, and (2) certification of their endorsement of any and all Staff Summary Reports and/or Presentations from 2021-2023 for the Project. Upon questioning, the City Attorney should be able to provide a well-referenced legal basis for the findings, and it should be verifiable with citations and excerpts of the specific language from the referenced regulatory document.

Thank you for your consideration in this matter.

Regards,

Shelby Sheehan